No. _____ 05 116 JUL 21 2005

In The
Supreme Court of the United States

KELLY J. JOHNSTON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI
WITH APPENDIX

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QUESTION PRESENTED

DID THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT ERR BY DENYING JOHNSTON RELEASE PENDING APPEAL AS PROVIDED IN 18 U.S.C. § 3143(b)?

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Petitioner, Kelly Johnston ("Johnston"), requests the Supreme Court of the United States to grant a writ of certiorari to reverse the decision of the United States Court of Appeals for the Fourth Circuit denying Johnston's Motion for Review of Denial of Release Pending Appeal. (Pet. App. 1).

REFERENCE TO OPINIONS BELOW

The opinions below are *United States v. Johnston*, Case No. 05-4487 (4th Cir. 2005)(Pet. App. 1); Judgment Order, May 2, 2004 (Pet. App. 4); and Order of the United States District Court for the District of Maryland Denying Release Pending Appeal (Pet. App. 2).

JURISDICTIONAL STATEMENT

The order of the United States Court of Appeals for the Fourth Circuit, for which Petitioner seeks review, was entered on July 15, 2005. (Pet. App. 1). Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254 and Supreme Court Rule 22(5).

STATUTE INVOLVED

18 U.S.C. § 3143(b). Release or detention of a defendant pending sentence or appeal.

(b) Release or detention pending appeal by the defendant

(1) Except as provided in paragraph (2), the judicial officer shall order that a person who has been

convicted of a crime and sentenced to a term of imprisonment and who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari, be detained, unless the judicial officer finds--

(A) by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released under section 3142(b) or (c) of this title; and

(B) that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in-

(i) reversal,

(ii) an order for a new trial,

(iii) a sentence that does not include a term of imprisonment, or

(iv) a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process.

If the judicial officer makes such findings, such judicial officer shall order the release of the person in accordance with section 3142(b) or (c) of this title, except that in the circumstance described in subparagraph (B)(iv) of this paragraph, the judicial